

## CABINET

18 July 2023

<b>Title:</b> ELWA Waste Disposal Contract – Outline Business Case	
<b>Report of the Cabinet Member for Public Realm and Climate Change</b>	
<b>Open Report with Exempt Appendix 1</b> (relevant legislation: paragraph 3 of Part I of Schedule 12A of the Local Government Act 1972)	<b>For Decision</b>
<b>Wards Affected:</b> All	<b>Key Decision:</b> Yes
<b>Report Author:</b> Rebecca Johnson, Director of Public Realm	<b>Contact Details:</b> E-mail: rebecca.johnson@lbbd.gov.uk
<b>Accountable Director:</b> Rebecca Johnson, Director of Public Realm	
<b>Accountable Strategic Leadership Director:</b> Leona Menville, Strategic Director of My Place	
<b>Summary</b> <p>The East London Waste Authority (ELWA) is the statutory joint waste disposal authority for the London Boroughs of Barking &amp; Dagenham, Havering, Newham and Redbridge (the Constituent Councils) and ELWA has a statutory duty to make arrangements for the treatment and disposal of the Local Authority Collected Waste (LACW) collected by (or on behalf of) the four Constituent Councils. These arrangements are currently discharged through the Private Finance Initiative (PFI) Integrated Waste Management Services Contract (IWMS Contract), which was entered into in December 2002 and is due to expire on 23 December 2027.</p> <p>In preparation for the expiry of the IWMS Contract, ELWA and the Constituent Councils, collectively the Partner Authorities, developed a new Joint Strategy for East London's Resources and Waste (the Joint Strategy) for the period from 2027 to 2057. The Joint Strategy sets out a direction of travel for the future management of waste after the expiry of the IWMS Contract. The Joint Strategy was adopted and ratified by each of the Partner Authorities in early 2022.</p> <p>The Joint Strategy commits ELWA to develop a procurement plan to support the delivery of future waste treatment and disposal services from 2027 onwards and to report to the Constituent Councils on the development of the procurement plan. The Outline Business Case (OBC) represents the first step towards the implementation of the procurement plan and has been produced to determine the preferred service delivery model for the new services at the expiry of the IWMS Contract. The OBC is at Appendix 1, which is in the exempt section of the agenda as it contains commercially confidential information (relevant legislation: paragraph 3 of Part I of Schedule 12A of the Local Government Act 1972) and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p>	

The key objectives that this exercise aims to achieve is around reducing future waste arisings, increasing recycling rates, reducing carbon impact, maximising opportunities for local regeneration, increasing social value and to manage waste in the most economically efficient way possible. The options proposed within the OBC creates an opportunity for a new stage of waste disposal management and partnership working between ELWA and the Constituent Councils.

ELWA has a statutory obligation to continue to deliver waste treatment and disposal services without interruption and the ratification of the OBC is necessary before ELWA can commence preparation for the procurement of these services.

Subject to all Constituent Councils agreeing to the recommendation, ELWA Authority Members will then be asked to approve the OBC at the ELWA Authority Meeting to be held on 29 September 2023.

### **Recommendation(s)**

The Cabinet is recommended to:

- (i) Agree to support the East London Waste Authority's (ELWA) Outline Business Case (OBC) at Appendix 1 to the report;
- (ii) Agree in principle to the Frizlands Lane Reuse and Recycling Centre being made available as a site to the new contractor by way of property agreement, subject to a future report relating to relevant property arrangements as required; and
- (iii) Note the programme of work that ELWA intended to undertake in relation to the expiry and demobilisation of the current IWMS Contract, which shall include ELWA carrying out any required site inspections on behalf of the Council in relation to the Frizlands Lane Reuse and Recycling Centre.

### **Reason(s)**

The aims of the Joint Strategy and subsequently the re-procurement of waste treatment and disposal services is underpinned by the commitment to ensure the procurement enables the Constituent Council's to manage municipal waste in the most environmentally considered way. This supports the Councils Corporate priority of 'Residents live in, and play their part in creating, safer, cleaner, and greener neighbourhoods'.

## **1. Introduction and Background**

- 1.1 The East London Waste Authority (ELWA) is the statutory joint waste disposal authority for the London Boroughs of Barking & Dagenham, Havering, Newham and Redbridge (the Constituent Councils) and ELWA has a statutory duty to make arrangements for the treatment and disposal of the Local Authority Collected Waste (LACW) collected by (or on behalf of) the four Constituent Councils. These arrangements are currently discharged through the Private Finance Initiative (PFI) Integrated Waste Management Services Contract (IWMS Contract), which was awarded to ELWA Ltd. (the IWMS Contractor) in December 2002 for a period of 25 years. The IWMS Contract is operated by Renewi (the IWMS Operator).

- 1.2 In preparation for the expiry of the IWMS Contract, ELWA and the Constituent Councils, collectively the Partner Authorities, developed a new Joint Strategy for East London's Resources and Waste (the Joint Strategy) for the period from 2027 to 2057. The Joint Strategy sets out a direction of travel for the future management of waste after the expiry of the IWMS Contract. The Joint Strategy has been adopted and ratified by each of the Partner Authorities in early 2022 and in the case of the Council approved at its Cabinet meeting on 18 January 2022.
- 1.3 In early 2022, ELWA also established the Procurement and Contract Expiry (PACE) Programme to manage the complex work associated with:
  - a) Contract Expiry and Transition: the activities required to manage the expiry and demobilisation of the IWMS Contract; and
  - b) Future Services Delivery: the activities required to ensure that new services arrangements are in place at the expiry of the IWMS Contract so that services continue to be delivered without interruption.
- 1.4 The PACE Programme is governed by a Programme Board, which consists of ELWA senior officers and Directors from each of the Constituent Councils. The Director of Public Realm attends each of the board meetings (bi-monthly) and has fed into the development of the Outline Business Case through the Programme Board, but also through a series of workshops attended by the Cabinet Member for Public Realm & Climate Change.
- 1.5 The Joint Strategy commits ELWA to develop a procurement plan to support the delivery of future waste treatment and disposal services from 2027 onwards and to report to the Constituent Councils on the development of the procurement plan.
- 1.6 The OBC is necessary to deliver the aims and objectives of the Joint Strategy, as adopted by Cabinet at its meeting on 18 January 2022 and so that ELWA can commence the procurement of the waste treatment and disposal services to be in place at the expiry of the Integrated Waste Management Services Contract (IWMS Contract).
- 1.7 ELWA will be the contracting authority for the procurement of the new service arrangements and, at the completion of the procurement process, ELWA will develop a Full Business Case (FBC) which will be subject to further confirmation of support by each of the Constituent Council's Cabinet.
- 1.8 The OBC is not seeking to set a budget for the years following the expiry of the IWMS Contract. There will be a future Cabinet report to formalise new levy arrangements from 2028/29 onwards. The timing will need to be considered alongside that of the FBC.
- 1.9 ELWA has a statutory obligation to continue to deliver waste treatment and disposal services without interruption and the ratification of the OBC is necessary before ELWA can commence preparation for the procurement of these services.

## 2. Proposal and Issues

2.1 ELWA developed the OBC using the Five Case Model and Green Book guidance provided by HM Treasury, which represents best practice on how to develop business cases. The following paragraphs explain what was done in each of the five cases and what was achieved.

### 2.2 Making the Case for Change (Strategic Case)

2.2.1 The Strategic Case of the OBC defined the scope of the project and demonstrated that change is needed.

2.2.2 The Joint Strategy demonstrates that change is needed because new service arrangements are required from late 2027 onwards when the IWMS Contract expires and ELWA has a statutory obligation to continue to deliver these services without interruption.

2.2.3 The scope of the OBC is “the management of all Local Authority Collected Waste (LACW) collected by (or on behalf of) the Constituent Councils, in accordance with the statutory duties of ELWA and the Joint Strategy of the Partner Authorities”.

### 2.3 Options Appraisal (Economic Case)

2.3.1 The Economic Case of the OBC consisted of a detailed assessment of alternative options. The process started with generating a long list of potential options which ELWA could consider at the end of the IWMS Contract. Five project dimensions were used to identify the long list of options, as follows:

- Service Delivery: to consider who is best placed to deliver the services, i.e. the private sector or the public sector;
- Service Scope: to consider how the waste treatment and disposal services could be packaged together in the future, for example combined together in one contract (integrated), or separated in a number of different contracts (disaggregated);
- Service Solution: to consider whether the waste facilities, which are required to treat and dispose of the LACW collected by (or on behalf of) the Constituent Councils, are provided by ELWA or by the private sector;
- Contract Duration: to consider the optimal duration of a future contract to replace any of the waste services under the IWMS Contract; and
- Capital Funding: to consider the options available for sourcing capital finance which may be required to develop waste infrastructure.

2.3.2 After the long list of options was generated, a further assessment was carried out and four options were shortlisted. These options were:

- **Option 1:** this option is similar to the current waste treatment and disposal arrangements but accounts for small changes which are required to meet new and anticipated waste legislation.

- **Option 2:** this option assumes that the current pre-treatment of residual waste, or black bag waste, which takes place at the facilities at Jenkins Lane and Frog Island, known as Mechanical Biological Treatment (MBT) process, will not be used in the future and instead these facilities are converted into waste reception facilities where waste delivered by the Constituent Councils is bulked and then transported elsewhere to be treated by merchant contractors.
- **Option 3:** like the previous option, this option assumes there is no longer a requirement to pre-treat residual waste at the facilities at Jenkins Lane and Frog Island. It assumes that the facility used for the pre-treatment at Frog Island is turned into a waste reception facility where waste is bulked and then transported elsewhere to be treated by merchant contractors; and the facility used for pre-treatment at Jenkins Lane is converted into a Materials Recovery Facility (MRF) where the dry recycling waste collected by the Constituent Councils is separated into different material streams which are then sent to other companies to turn into new products. Under this option the current Ilford Recycling Centre is no longer required because the dry recycling collected by the London Borough of Redbridge would be processed at the new MRF at Jenkins Lane.
- **Option 4:** this option envisages the closure of all operations currently delivered at Frog Island and the Ilford Recycling Centre. Under this option all LACW collected by the four Constituent Councils is delivered to Jenkins Lane, where there will be a new waste reception facility.

2.3.3 The assessment of the four options concluded that Option 2 should be taken forward. In parallel to this assessment, ELWA carried out preliminary market engagement with waste companies between January and March 2023. The selection of Option 2 is consistent with the views of the majority of the waste companies that participated in the preliminary market engagement. Option 2 minimises key risks identified with the other options, namely:

- Option 1: there were very few waste companies, at preliminary market engagement, who expressed willingness to continue to operate the current facilities at Jenkins Lane and Frog Island to pre-treat residual waste in the future when the IWMS Contract ends.
- Option 3: there were some waste companies, at preliminary market engagement, who expressed some interest in developing a new local facility to separate the dry recycling waste collected by the Constituent Councils, but given other risks, this is not considered the best route at this stage. There are ongoing and anticipated legislative changes in the waste sector, potential planning delays, and supply chain delays which are critical risks inherent to this option. In any event, an interim solution would be required whilst a new facility would be developed and commissioned. This option could be explored again in the future.
- Option 4: this option could be operationally very challenging given the impacts it is likely to have on the collection routes and rounds of some of the Constituent Councils; it could limit the ability of ELWA to implement business continuity given there would only be one waste reception and transfer facility; and finally the conversion of the facilities at Jenkins Lane may include regulatory risks in

securing permit/planning consents due to extra waste throughput and vehicle movements.

2.3.4 During preliminary market engagement, waste companies were also asked to provide their views on whether the waste treatment and disposal services should be procured as part of an integrated contract or separated into a number of waste services contracts. Most waste companies prefer a disaggregated contract rather than an integrated contract and the preference is also to disaggregate the contracts by waste stream. Different options were suggested in relation to contract lengths and these range from 2 to 15 years.

2.3.5 The conclusions of the Economic Case were, in relation to the five projects dimensions described in paragraph 2.3.1 above:

- Service delivery: the private sector is best placed to deliver the services at this stage. Public sector ('in-house') delivery of services was discounted at this stage as it would expose ELWA to risks which cannot or may be difficult to adequately predict and mitigate.
- Service Scope: the services in the current IWMS Contract will be delivered using several waste services contracts using a disaggregated model.
- Service solution: ELWA's existing assets at Jenkins Lane, Frog Island and Ilford Recycling Centre will be made available to the market during the procurement process for the delivery of waste reception and transfer services.
- Contract Duration: a mix of contract terms will be utilised, reflecting the market's views and considerations. The contract term for each waste stream will be defined after further market engagement to be held later in 2023.
- Capital Funding: it is anticipated that capital costs (e.g. building upgrades/conversion, equipment and vehicles) will be self-financed by ELWA by recourse to prudential borrowing. Any need for private sector funds will be determined during the procurement process.

## 2.4 The Preferred Procurement Option (Commercial Case)

2.4.1 The Commercial Case of the OBC determined the preferred procurement option and considered three options for packaging the disaggregated services:

- Contract Notice without Lots: the procurement of separate disaggregated services under a separate Contract Notice for each disaggregated service. Bidders must bid for all the disaggregated services included in the Contract Notice. For example, one Contract Notice for all of the Constituent Councils' Garden Waste.
- Contract Notice with Lots: the packaging of a disaggregated service into lots under one Contract Notice. Bidders may bid for some or all of the lots and may offer a "combined bid" which delivers economies of scale across more than one lot. For example, the splitting of the residual waste tonnage into smaller packages.

- Service Bundling – with or without Lots: the "bundling" of disaggregated services under one Contract Notice with or without lots. For example, waste reception and haulage services could be procured under the same Contract Notice as residual waste treatment (which may be split into further lots). Bidders could bid for waste reception, haulage and residual waste treatment as a combined proposal.

2.4.2 Each option was assessed for its strengths and weaknesses. The preferred procurement route is described in the following table for each of the disaggregated services (subject to refinement after further market engagement to be held later in 2023):

Disaggregated Service	Preferred Packaging Option
Garden Waste	Contract Notice without Lots
Food Waste	Contract Notice without Lots ( <i>tentative</i> )
Dry Recycling	Contract Notice without Lots
Residual Waste (including Bulky Waste disposal)	Service Bundling with Waste Reception, Haulage and RRCs (with Lots being (i) Waste Reception, Haulage and RRCs (ii) Residual Waste (in one or more lots) ( <i>tentative</i> )
Waste Reception, Haulage and RRCs (including Bring Banks and Bulky Waste recycling)	Service Bundling with Residual (with Lots) (see above) ( <i>tentative</i> )

2.4.3 ELWA's existing assets at Jenkins Lane, Frog Island and Ilford Recycling Centre will be made available to the market during the procurement process for the delivery of waste reception and transfer services, however their use will not be mandatory. The procurement process will not mandate the delivery of waste to a particular waste reception facility, therefore there may be scope for direct delivery of waste to a new waste contractor(s) facility(-ies). It will be a requirement, however, that at least two waste reception and transfer facilities are provided as a minimum requirement to accept waste collected by (or on behalf of) the Constituent Councils.

## 2.5 Financial Viability (Financial Case)

2.5.1 The Financial Case built upon the outputs of the Economic Case to assess the financial viability of Option 2, which is the option that was selected from the Economic Case, against Option 1, which is the closest option to the current service arrangements. The Financial Case considered assumptions on taxation, financing and inflation. The metrics used to assess the options include the Net Present Value (NPV) and a comparison of cash flows over an assumed 15-year period.

2.5.2 The Financial Case also assumes that:

- a special purpose vehicle will not be required for the new service arrangements. This means that the financial risks will not be directly comparable to the IWMS Contract, as a series of smaller contracts and/or potentially several suppliers will, all else being equal, lead to lower concentration of risk.

- if any external finance is required, the source of external finance will be prudential borrowing from the Public Works Loan Board (PWLB).

2.5.3 The Financial Case concluded that Option 1 and Option 2 have very similar costs and revenue.

2.5.4 The Financial Case also considered several scenarios and sensitivities to assess how responsive the service cost is to the key financial modelling assumptions, including inflation, which is currently at an exacerbated level. On an average cost (net of revenue) per tonne basis both Option 1 and Option 2 base case results show a modest reduction compared to the inflated current IWMS Contract service cost.

2.5.5 The underlying cost assumptions have been based on generic industry data and actual costs at contract award will vary according to macro-economic factors over the next few years, such as supply/demand pressures in the waste sector, commodity markets, legislative change and the risk profile adopted in the new contracts. This demonstrates the importance of a competitive procurement to ensure the best market price. Inflation assumptions also drove a large change in the average cost per tonne, although it should also be anticipated that Constituent Council budgets may also increase at the same rate in nominal terms under these circumstances, limiting this impact.

2.5.6 ELWA and the Constituent Councils have an aspiration to bring the cost of the future services down below the current IWMS Contract service budget. At the OBC stage, the base case financial modelling has made various prudent and conservative assumptions in keeping with the typical approach to developing an OBC. This means that there is scope for the costs projected at this stage to reduce as the project develops and the forward plan takes shape. The assumptions incorporated in the base case financial modelling include:

- An additional 33% and 47% contingency have been added to the capital expenditure assumptions for Options 1 and 2 respectively.
- Insurance costs of approximately £3.4m p.a. are included – there are potential insurance savings from converting the MBT facilities, but these savings have not been quantified at this stage.
- Royalty costs of approximately £1m p.a. are currently included. These may not be required depending on the future use of any existing equipment at the MBT facilities.
- PWLB funding interest rate has been assumed to be at 4.46% in line with the current rate for a 15-year fixed facility (including Certainty Rate). In line with inflation, current interest rates are above the last 5-year average and are likely to reduce over time.

2.5.7 In addition, it is important to note that the option costings are based on ELWA's External Advisers knowledge of similar schemes and published literature, rather than site specific detailed appraisals. Costings have been carried out to concept/feasibility level, and as no detailed design has been carried out, the capital costings have a range of -30% to +50%, and operating costs have a range of -30% to +30%.



2.5.8 Finally, a detailed breakdown of the current IWMS Contract costs is not known, therefore there will be variance between the options analysis and current ELWA costs. For instance, the current MBT operation achieves some waste diversion through moisture loss and production of a compost like output (CLO), whereas Option 1 assumes that the CLO is directed to energy from waste, and Options 2-4 do not include moisture loss. The relative costs of the options depend upon the costs of the treatment process, which is commercially confidential information and/or subject to future competitive procurement, meaning generic industry data is used for the OBC.

## 2.6 Project Governance and Risk (Management Case)

2.6.1 This case of the OBC sets out the governance framework that will be in place for the delivery of the procurement process and beyond. The governance framework that has been established is described in the following paragraphs.

- Authority Members: ELWA is comprised of eight Members with two Members appointed annually by each of the Constituent Councils. ELWA Members are, collectively, those responsible for strategic and corporate management functions of ELWA as a Waste Disposal Authority.
- Management Board: ELWA Management Board is made up of the ELWA Managing Director (Chair), the ELWA Finance Director, the ELWA Monitoring Officer, the Directors responsible for Environmental issues in each of the four Constituent Councils. The ELWA Management Board is an advisory body that ensures co-ordination between ELWA and the Constituent Councils' services.
- Procurement Committee: A Procurement Committee has been established by ELWA at its Authority Meeting on 30 June 2023. The Procurement Committee comprises of one Member from each of the Constituent Councils and they are appointed annually at the ELWA's Annual General Meeting. The Procurement Committee has delegated decision making in respect of some aspects of the PACE Programme.
- PACE Programme Board: The PACE Programme Board is made up of ELWA Senior Management Team and the Directors responsible for Environmental issues in each of the four Constituent Councils, which includes the Director of Public Realm.
- External Advisers: ELWA has appointed external technical, legal and finance advisers to support the delivery of the PACE Programme.

2.6.2 There may be implications on the contract management functions discharged by ELWA as a result of the Preferred Procurement Option and these will be revisited as the procurement progresses.

2.6.3 ELWA officers and the external advisers will commence a new round of market engagement in summer 2023. It is only at this stage that the exact procurement strategy for each of the services will be determined.

- 2.6.4 Public procurement law will apply to all procurements, and they will all be undertaken using a competitive procedure.
- 2.6.5 It is currently anticipated that the first round of procurements will commence during spring 2024. These will be staggered, with the specific timings and order being refined and finalised following market engagement.
- 2.6.6 ELWA will be responsible for managing the procurement process. Cabinet will only be required to consider the Full Business Case (FBC), which will be produced by ELWA at the completion of the procurement process. ELWA Authority Members will award each of the service contracts replacing the IWMS Contract. Whilst it is not possible to provide a clear timeframe for the production of the FBC, this will need to be produced sufficiently ahead of the IWMS Contract expiry date in late 2027.

## 2.7 **Contract Expiry and Transition**

- 2.7.1 Alongside preparation of the OBC, ELWA has begun undertaking and planning for activities required to manage the expiry and demobilisation of the IWMS Contract, with its primary objectives being to ensure that: (i) the IWMS Contractor and IWMS Operator meet their contractual obligations for contract exit and transition, so that full value for money is obtained for the residual period of the contract until expiry; and (ii) the expiry and transition process fully support ELWA's plans for assets and services following PFI contract expiry, so as to ensure service continuity.
- 2.7.2 ELWA has put in place arrangements which are consistent with the Infrastructure and Projects Authority (IPA) guidance on hand back of PFI contracts, and its external advisers have prepared a report on the expiry of the IWMS Contract comprising:
- review of the expiry conditions under the IWMS Contract and wider contractual structure, and of stakeholder's interests across the supply chain ("baseline analysis");
  - recommendations on a commercial strategy in relation to the expiry process building on the baseline analysis, including a timeline in relation to the expiry process and list of actions.
- 2.7.3 The commercial strategy details key risks and recommended actions, and ELWA is factoring these into its programme for expiry and transition. The key actions include:
- the need for ELWA to protect its position under the IWMS Contract in relation to day-to-day services, which could deteriorate in the run up to expiry;
  - development and agreement with ELWA Ltd and Renewi of a hand back plan and programme to cover the detailed steps required (as the IWMS Contract is relatively high level); and
  - the need for ELWA to obtain data and information from ELWA Ltd and Renewi to allow ELWA to plan for future services and for the handover arrangements, and to ensure it is aware of current asset condition.

2.7.4 As is usual for PFI contracts, the IPA will conduct periodic peer reviews into ELWA's expiry and transition arrangements – and the reviews to date have been positive.

## **2.8 Property / Asset Issues**

2.8.1 The Council leases Frizlands Lane Reuse and Recycling Centre (RRC), Rainham Road North, RM10 7HX for use under the IWMS Contract. Under the current leasing structure, ELWA was granted a headlease from the Council for a period of 30 years from 23 December 2002 until 22 December 2032, with ELWA granting the IWMS Contractor a corresponding underlease for a similar term of 30 years less 3 days to effectively expire on the 19 December 2032.

2.8.2 In relation to the process for the hand-back of the sites by the IWMS Contractor to ELWA, it is recommended that the Council engages ELWA to carry out any required site inspections to confirm that the IWMS Contractor leaves the sites in the appropriate condition and otherwise determine whether the IWMS Contractor has met its obligations relating to expiry and hand-back provisions in accordance with the terms of its underlease.

2.8.3 In relation to the new procurements, it is recommended that the existing structure of ELWA takes a headlease from the Council for Frizlands Lane Reuse and Recycling Centre, and ELWA granting an underlease to the relevant contractor (with that contractor being obliged under its contract with ELWA to comply with the terms of the underlease) is replicated. The IWMS Contractor will be replaced by a new contractor or contractors. No replacement contractor is expected to be a special purpose vehicle (unlike the IWMS Contractor) and each one is expected to be a substantive company.

## **3. Options Appraisal**

3.1 The options appraisal is considered in detail in section 2.3 above.

3.2 Approval of the OBC is critical to enable ELWA to continue to deliver its statutory duty seamlessly beyond December 2027, at the expiry of the IWMS Contract. This will also be instrumental in designing the services to contribute to the aims, objectives and targets of the Joint Strategy.

3.3 The Joint Strategy commits ELWA to develop a procurement plan to support the delivery of future waste treatment and disposal services from 2027 onwards and to report to the Constituent Councils on the development of the procurement plan. The OBC represents the first step towards the implementation of the procurement plan.

3.4 The OBC includes a comprehensive assessment of the options considered, and reasons for their rejection.

## **4. Consultation**

4.1 The OBC is not subject to its own public consultation process.

4.2 An eight-week public consultation was undertaken in 2021 on the draft Joint Strategy prior to its formal adoption by the Partner Authorities in early 2022, details of which can be found at <https://eastlondonwaste.gov.uk/jointstrategy/>.

- 4.3 ELWA has developed a Stakeholder Engagement Plan, which maps out the stakeholders and interested parties for the PACE Programme, the stages at which each will need to be engaged, and the likely focus of their interest in the PACE Programme. This is a live plan, which will continue to be enhanced and updated as the PACE Programme proceeds.
- 4.4 The proposals in this report were considered and endorsed by the PACE Programme Board, ELWA Management Board and discussed informally with ELWA Authority Members at a series of informal workshop sessions held throughout the development of the OBC. ELWA Authority Members also agreed to aspects of the OBC as this was developed, for example agreement on the scope of the services in the Strategic Case at a previous ELWA Authority Meeting.
- 4.5 The proposals in this report were considered and endorsed by the Executive Team at its meeting on 15 June 2023

## **5. Financial implications**

Implications completed by: Katherine Heffernan – Head of Service Finance

- 5.1 ELWA is a separate statutory body with its own financial arrangements from the Constituent Councils. It is funded by a levy raised from those Constituent Councils to cover all expenditure in accordance with statutory requirements. The levy is apportioned to each of the Constituent Councils under an agreed method of apportionment, according to the number of households and the tonnage of waste collected annually in each borough. Any surpluses or deficits are initially retained by ELWA and the members will collectively agree how to manage the balances built up.
- 5.2 The OBC is not yet seeking to set a budget for the years following the expiry of the IWMS Contract. The primary purpose of the financial information used in the OBC is to establish that the option selected is affordable and that funding options have been considered.
- 5.3 The Preferred Procurement Option will be used as a benchmark during the procurement process and at the completion of procurement, when the FBC will be produced. There are several conservative assumptions that have been included in the base case of the financial model that will be revisited as the procurement progresses.
- 5.4 There will be a future Cabinet report to formalise new levy arrangements from 2028/29 onwards, when the Partner Authorities are clear on the future contract structures and the parameters of future contract payment mechanisms. The timing will need to be considered alongside that of the FBC.
- 5.5 It is expected that the LBBB contribution to ELWA will rise significantly over the next decade – however this is not mainly due to this procurement but to the forecast rise in population/household numbers. This projected rise will be built into the MTFS and reviewed.

## 6. Legal implications

Implications completed by: Dr Paul Feild, Principal Lawyer Standards and Corporate Governance

- 6.1 ELWA is a statutory joint waste disposal authority established under The Waste Regulation and Disposal (Authorities) Order 1985, serving the London Boroughs of Barking & Dagenham, Havering, Newham and Redbridge. Under s.51 of the Environmental Protection Act 1990 (EPA), ELWA has statutory duties to provide treatment and disposal services for waste collected by/for the Constituent Councils, as well as to provide places for the public to use to dispose of their own household waste. Under s.48 of the EPA, the Constituent Councils have an overall statutory duty to deliver all waste they arrange to be collected to facilities as directed by ELWA.
- 6.2 ELWA is incorporated as a separate single-purpose local authority with its own constitution, with governance undertaken by eight Members who are nominated to join ELWA from the four Constituent Councils (two per borough).
- 6.3 Many of the services for which ELWA is responsible are currently delivered through the IWMS Contract, which expires in December 2027.
- 6.4 ELWA and the Constituent Councils were statutorily required under s.32 of the Waste Emissions Trading Act 2003 (WET Act) to produce a Joint Strategy for East London's Resources and Waste (the Joint Strategy) to replace the existing strategy which is expiring. The Joint Strategy was formally adopted by the Council at the Cabinet meeting of 18 January 2022.
- 6.5 The OBC presented as part of this report is the first stage in ELWA's procurement plan to replace the IWMS Contract to ensure continuity of service.
- 6.6 ELWA will be the contracting authority for the procurement process that will follow. The procurement of the new services will be in compliance with relevant Procurement Law. It is noted that some or all of the procurements may fall under the new Procurement Bill which is due to come into force in Spring 2024.

## 7. Other implications

- 7.1 **Risk Management** - A risk register, which is in line with the corporate risk management strategy of ELWA, has been developed for the PACE Programme. This is continually reviewed and updated as part of programme management and governance.

The OBC has been developed using a significant amount of industry insight and experience, in order to identify the most suitable service delivery models, procurement routes and future contract structures that will attract market interest and minimise the risks to service continuity associated with the expiry of the IWMS contract.

- 7.2 **Staffing Issues** - There will be no direct impact on Council staff or staffing levels because of the OBC.

There may be TUPE implications associated with the expiry arrangements of the IWMS Contract and the procurement of new contracts. The implications are not known at this stage and will be managed by ELWA accordingly in due course. These potential implications would not affect LBB Council employees.

- 7.3 **Corporate Policy and Equality Impact** - The aims of the Joint Strategy and subsequently the re-procurement of waste treatment and disposal services is underpinned by the commitment to ensure the procurement enables the Constituent Council's to manage municipal waste in the most environmentally considered way. This supports the Councils Corporate priority of 'Residents live in, and play their part in creating, safer, cleaner, and greener neighbourhoods'.

ELWA's OBC sets a direction of travel for the re-procurement of waste treatment and disposal services, and at this stage there is nothing that would suggest any adverse impacts for residents and other service users, including those with protected characteristics. As ELWA commences the procurement process, it is possible that Equality Assessments will be required for some elements of the services, which will be kept under review.

- 7.4 **Health Issues** - There are no direct health and wellbeing implications associated with the OBC, as no detailed decisions have yet been taken on the future structure or nature of waste treatment and disposal services.

The procurement of the services will be undertaken in accordance with the aims, objectives, priorities and actions set out in the Joint Strategy. Objective 7 of the Joint Strategy aims "to maximise all opportunities for local regeneration and increased social value benefits from waste and resource management, including employment, skills and wellbeing", and Chapter 6 of the Joint Strategy sets out the work that is being done to develop metrics against which social value, air quality and other impacts can be measured. ELWA will work closely with the Constituent Councils to develop a suitable evaluation framework and approach for evaluating solutions put forward by bidders during the procurement process that includes health and wellbeing considerations.

- 7.5 **Climate Emergency Issues** - It is not possible to determine at this stage the greenhouse gas emissions arising from waste treatment and disposal services that will be procured in the future. However, the procurement of the new contracts will be undertaken in line with the aims, objectives, priorities and actions set out in the Joint Strategy. This includes a focus on reducing the greenhouse gas emissions associated with wastes and resources management, alongside the aspirations on improving performance against tonnage-based indicators on waste generation, reuse, recycling, and use of landfill.

Greenhouse gas emissions arise during both the collection and treatment of waste, and the design of services at one of these stages can influence the emissions that result in the other. It will therefore be important to consider 'whole system' emissions when determining how best to design services and procure new contracts, in order to deliver the most favourable environmental outcomes for ELWA and the Constituent Councils. ELWA will work closely with the Constituent Councils to develop a suitable evaluation framework for evaluating solutions put forward by bidders during the procurement process which includes consideration of emissions. This approach will be developed in line with emerging national policy from the

Government's Resources and Waste Strategy, and in general conformity with the Mayor of London's London Environment Strategy

- 7.6 **Property / Asset Issues** - The Council leases Frizlands Lane Reuse and Recycling Centre (RRC), Rainham Road North, RM10 7HX for use under the IWMS Contract. Under the current leasing structure, ELWA was granted a headlease from the Council for a period of 30 years from 23 December 2002 until 22 December 2032, with ELWA granting the IWMS Contractor a corresponding underlease for a similar term of 30 years less 3 days to effectively expire on the 19 December 2032.

Section 2.8 of the report sets out arrangements for site inspections, hand-back arrangements and lease / underlease proposals for the new contract.

**Public Background Papers Used in the Preparation of the Report:**

[Joint Strategy for East London's Resources and Waste](#)

**List of appendices:**

- **Appendix 1** – Draft Outline Business Case (exempt document)